

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION,)	
)	
Petitioner,)	
)	
vs.)	No. 11-2297 RE
)	
MITCHELL J. LEONARD,)	
)	
Respondent.)	

DECISION

Mitchell J. Leonard’s license is subject to discipline because he provided false and fraudulent information on a licensing application, he lacks good moral character, and he lacks the competency to transact business as a real estate broker in such a manner as to safeguard the interests of the public.

Procedure

On November 23, 2011, the Missouri Real Estate Commission (“MREC”) filed a complaint seeking to discipline Leonard. On December 1, 2011, we served Leonard with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. The hearing in this case is set for August 7, 2013.

On April 23, 2013, the MREC filed a motion for summary decision. On May 16, 2013, Leonard filed a cross-motion for summary decision. On June 17, 2013, the MREC filed a

response to the alleged uncontroverted facts submitted by Leonard. On July 3, 2013, Leonard filed a reply memorandum in support of his motion for summary decision.

Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if a party establishes undisputed facts entitling that party to a favorable decision. Based on the evidence presented, we make the following findings of fact.

Findings of Fact

1. Leonard holds a Broker-Associate license issued by the MREC, which has been current and active since it was originally issued on January 7, 2003.

Count I

2. On July 15, 1985, an indictment was filed in the United States District Court for the Western District of Missouri, Western Division, case number 85-00131-02-CR-W-8, charging that:

Between May 15, 1984, and June 30, 1984, . . . Mitchell Justin Leonard [and others] knowingly and with intent to defraud, possessed and concealed falsely made, forged and counterfeited obligations of the United States, that is, counterfeit \$20.00 federal reserve notes bearing face plate number 389, back plate number 321, series 1981, issued by the Federal reserve Bank of St. Louis, Missouri, and the said Mitchell Justin Leonard [and others], then knew the said federal reserve notes to be falsely made, forged and counterfeited; all in violation of Title 18, United States Code, § 472.[¹]

3. On August 13, 1985, Leonard pled guilty to the charge made in the indictment (“1985 Federal guilty plea”). The court accepted his plea of guilty and entered a judgment of guilty in his case.

4. On October 30, 1985, Leonard received a suspended imposition of sentence and was placed on probation for a period of three years, was fined \$100, was required to participate in an

¹ Exhibit B to Petitioner’s motion for summary decision.

alcohol counseling program and to perform 100 hours of voluntary community service within the first 30 months of his probation.

5. The criminal offense of “Uttering counterfeit obligations or securities,” 18 U.S.C. 472, is a felony, punishable by a maximum of 20 years’ imprisonment, a fine, or both.²

6. On January 6, 2003, the MREC received Leonard’s application for a real estate broker associate license.

7. In question 6-13 of the real estate broker associate license application, Leonard was asked the following question:

Have you been finally adjudicated and found guilty or entered a plea of guilty or nolo contendere in a criminal prosecution in this state or any other state or of the United States, whether or not sentence was imposed? NOTE This includes Suspended Imposition of Sentence, Suspended Execution of Sentence and alcohol related offenses, i.e., DWI and BAC. If yes, answer questions below and provide the date of the conviction and/or pleading, nature of the offense, court location, and case number.[³]

8. Leonard provided the following in response: “SIS 20 year AGO Comm. Service Completed. Case Closed. No charge was in Cooper County.”

9. Leonard was then asked, “Was this a misdemeanor conviction(s) or pleading(s)?” Leonard responded “yes.”

10. Leonard was then asked, “Was this a felony conviction(s) or pleading(s)?” Leonard responded “no.”

11. Leonard’s responses on his application misrepresented that he had pled guilty to a misdemeanor, instead of a felony, when he knew such response to be false.

12. Leonard was granted a broker associate license by the MREC on January 7, 2003.

² *Georges v. U.S.*, 2008 WL 2020205, (E.D. Mo., May 8, 2008).

³ Exhibit A to Petitioner’s motion for summary decision.

13. Leonard's original application contained Leonard's signature attesting to the truth of all statements made.

Count II

14. In 2003-2004, Leonard and MJL Cattle⁴ engaged in numerous unfair practices, either individually, or through his agents, including: hindering consumers' ability to inspect cows before delivery to prevent them from learning that the cows delivered were not the same as those observed or agreed upon; a bait and switch scheme, where a consumer is shown and induced to purchase cows of a higher quality, but cows of a lower quality are delivered; misrepresenting the ages, health status, pregnancy status, vaccination status, ownership, and origin of the cows sold; and refusing to properly address consumers' complaints regarding the condition of the cows received.

15. On March 16, 2009, in the Circuit Court of Howard County, Missouri, case number O6HD-CV00065, ("Howard County Case") a judgment was entered against Leonard, finding that Leonard, and his company, MJL Cattle Co., LLC, had, through their own acts and the acts of their agents, committed 134 violations of § 407.020,⁵ the Missouri Merchandising Practices Act.

16. The Howard County Circuit Court ordered restitution and penalties to be paid by Leonard and his company in an amount exceeding \$500,000, in addition to 90% of the litigation costs associated with this case.

⁴ A limited liability company formed by Leonard.

⁵ RSMo Supp. 2008. Statutory references, unless otherwise noted, are to the 2000 Revised Statutes of Missouri.

Conclusions of Law

We have jurisdiction to hear this case.⁶ The MREC bears the burden of proving that Leonard's license is subject to discipline by a preponderance of the evidence.⁷ The MREC argues that there is cause for discipline under § 339.100:⁸

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

(25) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure or license renewal. As used in this section, "**material**" means important information about which the commission should be informed and which may influence a licensing decision[.]

⁶ Section 621.045, RSMo Supp. 2012.

⁷ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁸ The MREC's complaint cites the 2010 Supplement. See our discussion later in this decision.

At the time of Leonard's application (2003), § 339.100.2 authorized discipline for:

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

(15) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(18) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or gross incompetence[.]

I. Retroactive Application of Law

When Leonard filled out his application in 2003, subdivision (25) was not a cause for discipline, and he argues that the MREC cannot discipline his license based on it. We agree.⁹ We will consider whether there is cause for discipline under the version of § 339.100 in effect at the time of the conduct at issue, which for both Counts I and II is RSMo 2000.¹⁰

While the MREC cited the 2010 Supplement version of the statute in its complaint, the only other significant change in the relevant parts of the statute was the subdivision numbers – (15) became (16), and (18) became (19). Because the MREC's complaint cited the language rather than just the subdivision numbers, we conclude Leonard was given sufficient notice of the provisions he is alleged to have violated.

⁹ *Missouri Real Estate Commission v. Rayford*, 307 S.W.3d 686 (Mo. App., W.D. 2010) (statute requiring revocation of a license of an agent who pled nolo contendere to a dangerous felony could not be applied to revoke the license when the crime occurred before the statute was enacted). *But see Garozzo v. Missouri Dept. of Insurance, Financial Institutions & Professional Registration*, 389 S.W.3d 660, 666-67 (Mo. banc 2013) (distinguishing *Rayford* because it was an applicant case).

¹⁰ The numbering and slight language change was in 2004 HB 985.

II. Authority to Investigate Conduct in Count II

Leonard argues that the MREC lacked the authority to investigate conduct that is not related to the business of real estate because § 339.100.1 states that the MREC “may, upon its own motion, and shall upon receipt of a written complaint filed by any person, investigate any **real estate-related activity** of a licensee[.]”¹¹ Leonard argues that this language, which was added in 2004, limits the otherwise broad authority to impose discipline for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct or gross negligence[.]”

We have no power to superintend another agency’s procedures or to declare them infirm or unauthorized.¹² The issue has been raised and may be argued before the courts if necessary.¹³ We also note that the legislature enacted § 339.100.5 in 2006. That section requires the revocation of a broker or salesperson’s license if the person has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of certain criminal offenses that have no relation to the practice of real estate. Leonard’s position that the MREC’s investigation should be limited to real estate-related activities would lead to the absurd result that the MREC could not investigate claims about crimes the legislature thought important enough to mandate license revocation for committing.

As noted above, we have jurisdiction to consider the evidence before us and to make the determination whether that evidence is cause for discipline.

¹¹ RSMo Supp. 2012 (emphasis added).

¹² *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm’n*, 700 S.W.2d 445, 450 (Mo. banc 1985).

¹³ *Tadrus v. Missouri Bd. of Pharmacy*, 849 S.W.2d 222 (Mo. App., W.D. 1993).

III. Cause for Discipline

A. Count I – Misrepresentation on License Application

1. False/Fraudulent Representation

The MREC argues that Leonard’s failure to disclose the felony status of his 1985 federal guilty plea provides cause to discipline his license because he has obtained a license by false and fraudulent representation, fraud and deceit.

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.¹⁴ Deception means an act designed to cheat someone by inducing their reliance on misrepresentation.¹⁵ Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.¹⁶ To “deceive” is “to cause to believe the false.”¹⁷ False is defined:

1 : not genuine . . . 2 a : intentionally untrue . . . b : adjusted or made so as to deceive . . . c : intended or tending to mislead . . . 7 a : based on mistaken ideas[. ¹⁸]

Leonard argues that he did not submit false information because he received an SIS, not a conviction. We agree that a criminal prosecution ending with a suspended imposition of sentence does not result in a conviction.¹⁹ But the MREC’s application specifically noted that SIS dispositions must be included. The next questions also clearly asked whether it was a misdemeanor or felony conviction **or pleading**. Leonard pled guilty to a felony, but claimed that it was a misdemeanor.

¹⁴ *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

¹⁵ *State ex rel. Nixon v. Telco Directory Publishing*, 836 S.W.2d 596, 600 (Mo. banc 1993).

¹⁶ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 794 (11th ed. 2004).

¹⁷ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 584 (unabr. 1986).

¹⁸ MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 451 (11th ed. 2004).

¹⁹ *Yale v. City of Independence*, 846 S.W.2d 193, 194 (Mo. banc 1993).

Leonard made a false statement on his application, and the MREC relied on that false statement in granting him a license. Leonard claims that he lacked the intent necessary to find fraud because he believed that the crime was a misdemeanor. We may infer the requisite mental state from the conduct of the licensee “in light of all surrounding circumstances.”²⁰ Leonard admitted to the guilty plea, but lessened the severity of the crime by stating that it was a misdemeanor. He failed to provide information that was required – name of case, court location, and case number – that would have allowed the MREC to check his records. We believe that he intentionally checked the wrong box with the intent to have the MREC rely on the assertion that he had pled guilty to a misdemeanor, not a felony, and grant him a license. This constitutes fraud.

There is cause for discipline under § 339.100.2(10), and we grant the MREC’s motion for summary decision as to this subdivision.

2. Grounds to Refuse License

Section 339.040.1²¹ states that licenses shall be granted only to persons who:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing;
and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

The MREC argues that Leonard’s failure to disclose the felony status of his 1985 federal guilty plea on his initial application demonstrates a lack of good moral character, a lack of a

²⁰ *Duncan v. Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs*, 744 S.W.2d 524, 533 (Mo. App., E.D. 1988).

²¹ These subdivisions have not changed since 2000.

reputation for honesty, lack of integrity and fair dealing, and lack of a competence to transact the business of a broker in such a manner as to safeguard the interest of the public.

Good moral character is honesty, fairness, and respect for the law and the rights of others.²² One instance of lying on an application is not sufficient to support a finding that Leonard lacks good moral character.

Reputation is the “consensus view of many people[.]”²³ Reputation is not a person’s actions; it is “the general opinion . . . held of a person by those in the community in which such person resides[.]”²⁴ We have no evidence of Leonard’s reputation.

Competent is defined as “having requisite or adequate ability or qualities[.]”²⁵ Incompetency is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation,²⁶ and a “state of being.”²⁷ Again, one instance of lying on an application is not sufficient to support a finding that Leonard lacks competence.

There is no cause for discipline under §339.100.2(15), and we grant Leonard’s motion for summary decision as to this subdivision.

3. Any Other Conduct

The MREC argues that Leonard is subject to discipline under § 339.100.2(18) for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]” The adjective

²²*Hernandez v. State Bd. of Regis’n for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

²³*Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992).

²⁴*State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App., K.C.D. 1976) (quoting Black’s Law Dictionary, Rev. 4th ed. 1467-68)).

²⁵MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 253 (11th ed. 2004).

²⁶*Tendai v. Missouri Bd. of Regis’n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005).

²⁷*Albanna v. State Bd. of Regis’n for the Healing Arts*, 293 S.W.3d 423, 436 (Mo. banc 2009).

“other” means “not the same : DIFFERENT, any [other] man would have done better[.]”²⁸

Therefore, subdivision (18) refers to conduct different from that referred to in the remaining subdivisions of § 339.100.2.

We have found that the conduct at issue is cause for discipline under § 339.100.2(10). There is no “other” conduct. Therefore, we find no cause for discipline under § 339.100.2(18). We grant Leonard’s motion for summary decision as to this subdivision.

B. Count II – Missouri Merchandising Practices

In 2003-2004, Leonard and MJL Cattle engaged in numerous unfair practices, either individually or through his agents, including: hindering consumers’ ability to inspect cows before delivery to prevent them from learning that the cows delivered were not the same as those observed or agreed upon; a bait and switch scheme, where a consumer is shown and induced to purchase cows of a higher quality, but cows of a lower quality are delivered; misrepresenting the ages, health status, pregnancy status, vaccination status, ownership, and origin of the cows sold; and refusing to properly address consumers’ complaints regarding the condition of the cows received.

The Court found that Leonard, and his company, MJL Cattle Co., LLC, had, through their own acts and the acts of their agents, committed 134 violations of § 407.020.1, the Missouri Merchandising Practices Act:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . in or from the state of Missouri, is declared to be an unlawful practice.^[29]

²⁸WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986).

²⁹ This language has not changed since the 2000 version of the Revised Statutes.

Leonard argues that he did not commit the conduct we have found in our Findings of Fact. A conviction resulting from a guilty plea collaterally estops the issue of whether the person committed the criminal offense.³⁰ Leonard's argument that disciplining his license serves no purpose because he is obligated to make restitution to his victims also fails because the primary purpose of professional licensing is to protect the public,³¹ not just the victims of any particular conduct.

1. Grounds to Refuse License

The MREC argues that Leonard's commission of 134 violations of the Missouri Merchandising Practices Act demonstrates a lack of good moral character, a lack of a reputation for honesty, integrity and fair dealing, and a lack of competence to transact the business of a broker in such a manner as to safeguard the interest of the public, and, therefore, provides cause to discipline his license.

We agree with the MREC that this conduct demonstrates a lack of good moral character. Again, there is no evidence about Leonard's reputation. Leonard argues that the conduct is completely unrelated to the business of a real estate broker, but we find that defrauding one's customers on such a scale does demonstrate a lack of competence to transact the business of a real estate broker in such a manner as to safeguard the public.

There is cause for discipline under §339.100.2(15), and we grant summary decision to the MREC as to this subdivision.

2. Other Conduct

As noted above, there is no "other" conduct. We grant summary decision to Leonard and find no cause for discipline under § 339.100.2(18).

³⁰ *Carr v. Holt*, 134 S.W.3d 647, 649-50 (Mo. App., E.D. 2004) (citing *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. banc 2001)).

³¹ *Lane v. State Comm. of Psychologists*, 954 S.W.2d 23, 25 (Mo. App., E.D. 1997).

Summary

Count I

We grant summary decision to the MREC and find cause for discipline under § 339.100.2(10). We grant summary decision to Leonard and find no cause for discipline under § 339.100.2(15) and (18).

Count II

We grant summary decision to the MREC and find cause for discipline under § 339.100.2(15). We grant summary decision to Leonard and find no cause for discipline under § 339.100.2(18).

Having disposed of all of the issues in this case, we cancel the hearing set for August 7, 2013.

SO ORDERED on August 1, 2013.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner